

### **REMARKS**

#### **Status of case**

Claims 15-18, 22-30, 32-43 and 66-68 are currently pending in this case.

#### **Objection to the Specification**

Applicant attaches herewith the Abstract provided on a separate sheet.

#### **Objection to the Drawings**

The enclosed replacement sheets obviate the objection to the drawings. Accordingly, please replace originally submitted drawings sheets 1-10 with the enclosed ten REPLACEMENT SHEETS.

#### **Rejection under 35 U.S.C. § 112**

Claims 15-18, 22-30, 32-43, 66-68 are rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite.

Applicant amends independent claims 15, 22, and 40 to recite, among other things, "wherein the new allocation of funds is achieved by buying and selling investment instruments effected by individual asset managers of one or more of the plurality of asset manager programs." Further, Applicant respectfully submits that a one skilled in the art would readily understand from, for example, the section of the specification entitled "Summary of the Invention", that the most subordinate allocation is to an asset manager program which is managed by an asset manager. The asset manager for a respective asset manager program effects the buying and selling of investment instruments to achieve a new allocation of funds that have been previously determined to bring the overall investment back within the requirements of predefined rules.

With reference to claims 22, 26, 29, 30 and 40, Applicant respectfully contends that one skilled in the art would readily understand from the description and the figures that the multiple intermediate allocations of funds between the most superior level (i.e. the investment portfolio) and the most subordinate levels (i.e. the asset manager programs) form a "network of

*allocations*". Each subordinate allocation is linked to a superior allocation and visa-versa such that the phrase "*network of allocations*" is a clear and apt description.

Further, the Examiner considers that the association of the phrase "*pooled investment funds*" with the phrase "*network of allocations*" renders the meaning of "*network of allocations*" unclear. In view of the above, there does not appear to be any conflict created by such an association and Applicant respectfully requests reconsideration by the Examiner. However, in order to better clarify claims 22, 26, 29, 30 and 40, Applicant amends these claims such that references to managing funds specifically refers to managing "*pooled investment*" funds through a network of intermediate allocations of the "*pooled investment funds*".

For the foregoing reasons and in view of the amendments to the claims, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112.

#### **Rejection under 35 U.S.C. § 101**

Claims 26-30, 32-39 and 67 are rejected under 35 U.S.C. § 101 as being directed to allegedly non-statutory subject matter.

Applicant respectfully traverses the rejection. Applicant notes that this rejection issued before the Supreme Court's June 28, 2010 *Bilski* decision, which stated that the machine-or-transformation test is not the sole test for patent-eligibility of processes under 35 U.S.C. § 101. However, even under the machine-or-transformation test, Applicant notes the at least one processor implements claimed method steps, as compared to a situation where a machine or apparatus is merely an object on which the method operates.

Applicant further submits that claims 26-30, 32-39 and 67 are not directed to an abstract idea, but rather produces a concrete, useful and tangible result implemented using at least one processor; namely, the investment of pooled funds in the manner claimed. The concrete, useful and tangible results of the claimed methods provide various advantages and benefits, including those described on pages 27-28 of the specification as filed.

For the forgoing reasons, Applicant respectfully submits that claims 26-30, 32-39 and 67 are directed to patentable subject matter and requests withdrawal of the rejection under 35 U.S.C. § 101.

**Rejection under 35 U.S.C. § 102**

Claims 15-18, 22-26, 28-30, 32-33, 35-43, 66, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray et al. (U.S. 6,018,722).

Applicant amends independent claims 15, 22, 26, 30 and 40 to recite that the pooled investment funds are pooled investment funds from multiple different investors. Applicant also amends independent claims 26 to include the phrase "*network of intermediate allocations*" to clarify the connected and inter-related nature of the allocations rather than a mere plurality of allocations.

Ray does not teach or suggest the rebalancing of an investment portfolio of funds pooled from multiple different investors. Further, Ray does not disclose, teach or suggest a network of intermediate allocations of pooled funds where all superior intermediate allocations are effected external to any asset manager program such that asset manager skills are not required for allocation management at superior intermediate allocation levels.

The feature of retaining all superior intermediate allocations external to any asset manager program allows overall costs of implementing the system to be reduced whilst maintaining a high level of customization. This feature is present in the independent claims by virtue of the phrase "*...all superior intermediate allocations effected external to any asset manager program...*" and clearly distinguishes the claims of the instant application from the prior publication of Ray.

For the foregoing reasons, Applicant respectfully submits that Ray does not teach all the features of independent claims 15, 22, 26, 30, and 40, as amended, and request withdrawal of the 102(b) rejection of claims 15-18, 22-26, 28-30, 32-33, 35-43, 66, and 68.

**Rejection under 35 U.S.C. § 103**

Claims 27, 34 and 67 are rejected under 35 U.S. C. 103(a) as being unpatentable over Ray as applied to claim 26.

For the reasons discussed above, Ray does not teach or suggest all the features of independent claims 26 or 30, as amended. In other words, Applicant respectfully submits that

each of claims 27, 34, and 67 depend from patentable claims and are thus patentable themselves. Applicant respectfully requests withdrawal of the 103(a) rejection and allowance of the claims.

### **Examiner's Response to Arguments**

While the Examiner has stated on pages 19-20 of the office action that Applicant's previous submissions have been fully considered and the previous submissions are not considered persuasive, Applicant respectfully draws the Examiner's attention to the various additional arguments and claim amendments presented herein and respectfully requests favorable reconsideration of the pending claims of the instant application.

### **SUMMARY**

Applicant respectfully requests the Examiner grant allowance of this application. The Examiner is invited to contact the undersigned attorney for the Applicant via telephone if such communication would expedite this application.

Respectfully submitted,

/Rickard K. DeMille/  
Rickard K. DeMille  
Registration No. 58,471  
Attorney for Applicant

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312)321-4200